**IN THE UNITED STATES DISTRICT COURT**
**FOR THE EASTERN DISTRICT OF VIRGINIA**
**ALEXANDRIA DIVISION**

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| **TFOR LLC,**<br><br>***PLAINTIFF,***<br>**VS.**<br><br>**VIRTUSTREAM, INC.,**<br><br>***DEFENDANT.*** | **CIVIL ACTION NO.**<br><br>**DEMAND FOR JURY TRIAL** |

# COMPLAINT

## PARTIES

1. Plaintiff, TFOR LCC ("TFOR" or "Plaintiff") is a Virginia Limited Liability Company with registered office in Fairfax County, Virginia. Its Headquarters are located at 11291 Spyglass Cove Lane, Reston, VA 20191. TFOR is owned and operated by David von Vistauxx ("DvV"). Its primary place of business is the Commonwealth of Virginia. TFOR is the sole owner of the invention subject of this law suit, having been assigned all rights and title to said invention by the inventor, DvV. Exhibit 1, attached.

2. Defendant Virtustream, Inc. ("Virtustream" or "Defendant") is a Delaware Corporation licensed to do business in Virginia with registered offices located at CT Corporation System, 4701 Cox Road, Suite 285 Glen Allen, VA 23060. Virtustream's headquarters are located at 4800 Montgomery Lane, Suite 100, Bethesda, Maryland.

## JURISDICTION

3. Plaintiff brings this action for a Declaratory Judgment, pursuant to 28 U.S.C. § 2201, to redress claims that arise under federal law, specifically 28 U.S.C. § 1338(a), 35 U.S.C. § 115, 35 U.S.C. § 118, 35 U.S.C. § 256, 37 C.F.R. § 1.2, and 37 CFR § 3.73a because Defendant has

filed an application for a patent with the United States Patent and Trademark Office (USPTO) with Virtustream as applicant instead of the inventor as applicant and for falsely claiming to the USPTO that Defendant was the owner and authorized to file a patent for the invention pursuant to 35 U.S.C. § 118.

4. Because most of the Plaintiff's claims arise under these federal laws and regulations stated above, jurisdiction is also based on 28 U.S.C. § 1331, and 28 U.S.C. § 1338(a) (Federal Question and District Court Jurisdiction concerning patents).

5. Plaintiff also seeks redress, based on 28 U.S.C. § 1332 (Diversity of Citizenship), for claims that arise under state law that Defendant has misappropriated an invention owned by Plaintiff under assignment by the inventor, David von Vistauxx (DvV), the sole owner of TFOR. The invention ("Trans Encryption") was created before the inventor DvV was employed by Defendant, Virtustream, which on information and belief is wholly owned by EMC Corporation (EMC). The misappropriation includes falsely and without legal bases claiming ownership of the invention Trans Encryption with knowledge that under federal and state law Defendant could not be the owner of the invention. The parties are citizens of different states and the claims of Plaintiff exceed $75,000 exclusive of interest and costs. Plaintiff seeks $40,000,000 (Forty Million Dollars) in damages from Defendant.

## STATEMENT OF FACTS

6. TFOR is the owner by written assignment from DvV, executed 6 September 2016, of all the rights to Trans Encryption technology ("Trans Encryption"). Exhibit 1 The assignment includes, *inter alia* "Trans Encryption Studies & Practice", a notebook ("Notebook") maintained by inventor and assignor DvV comprised of dated entries showing a meticulous description of the genesis and development of all elements and details of the invention, and U.S. Patent Application Serial Number 15/008,608 titled "Removing Information from Data" (the " '608 Application") filed on January 28, 2016, based on disclosures contained in the Notebook, and a provisional Patent Number 62/318,741 (the " '741 Application") filed by DvV on 5 April 2016 comprising the contents of the Notebook.

7. Trans Encryption operates by taking digitized intelligible information and dividing that information into randomized strings of data none of which contain any information. The information can only be recovered by a party who has simultaneous access to the component randomized strings of data, together with a technical configuration of hardware and software for reassembling the randomized strings. Unlike the prior art, Trans Encryption is able to reassemble without having to make intermediate reassembles. The invention was successfully tested by the inventor in August 2007, storing each of the divided strings on separate machines connected to the same hub. Several minutes were required to rebuild the divided test strings.

8. The invention operates on top of a network configuration whose characteristics are independent of the operation of the invention. As these characteristics have improved, the time required for the invention to rebuild divided randomized strings into intelligible information has been reduced, as demonstrated by further tests done by the inventor, including tests done in January 2014 using two machines on an external router.

9. The invention described and claimed in the ’608 Application is fully disclosed in the Notebook and was tested successfully in August 2007 and January 2014. Neither the description nor the claims in the ’608 Application refer to or depend upon the characteristics of the network configuration affecting the time required to rebuild the divided randomized strings into intelligible information.

10. Defendant Virtustream claims ownership over the invention disclosed in the ’608 Application, and this claim of ownership is in derogation of the ownership rights of TFOR in the invention disclosed and claimed in the ’608 Application. Defendant is not the inventor, is not the assignee, does not have a right to claim an obligation of the inventor to assign, and does not have a sufficient proprietary interest in the ’608 Application to warrant the status of “applicant” within the meaning of 35 U.S.C. § 115, 35 U.S.C. § 118, 37 C.F.R. 1.2 and 37 CFR § 3.73a and other applicable federal statutes.

11. Although Defendant has never disclosed the basis for its claimed ownership of the ’608 Application, on information and belief TFOR alleges that Defendant claims ownership based on the short employment DvV had with Defendant.

12. On or about 17 April 2004, DvV began keeping the Notebook for an idea he had for a technology that became Trans Encryption, an invention that is disclosed in part and claimed in part in the '608 Application. The Notebook is in the inventor's own handwriting and has specific dates when his ideas for the invention were crystalized. The last entry in the Notebook is 4 January 2015. The invention as described and claimed in the '608 Application was completed and tested before DvV began employment with Defendant on 1 June 2015.

13. None of the duties or activities that were part of DvV's employment with Defendant involved Trans Encryption or anything that could be or was related to any technology that remotely relates to Trans Encryption.

14. Before DvV started his employment with Defendant, DvV was required by Defendant to sign a Proprietary Information and Invention Assignment Agreement ("PIIAA"). It was signed by DvV on 15 May 2015 and approved by Defendant on 26 May 2015. Attached as Exhibit 2.

15. Before signing the pre-printed PIIAA document drafted by Defendant, DvV insisted that the PIIAA be amended to exclude from its scope Trans Encryption and other works of the inventor. DvV did not sign the PIIAA until these excluded subject matters were listed on an Exhibit A that was attached to the PIAA and was referenced in the PIIAA. (Exhibit 2, Plaintiff TFOR's Exhibits to Complaint Page # 8 - 9) Although Exhibit A was a part of Defendant's standard PIIAA, the contents of the Exhibit A that DvV signed is in DvV's own handwriting and specified all work that was to be omitted and excluded from the scope of the PIIAA agreement. The list included Trans Encryption (specifically and explicitly using the terms "All work/design in transencryption"), which DvV had been working on since 2004 (using a notebook titled "Trans Encryption Studies & Practice") and which had nothing to do with his proposed employment at Defendant. Indeed, DvV was told by the Human Resources department at Defendant that the exclusion from scope, as defined in paragraph 2.2c of the PIIAA agreement, meant that his continued work on Trans Encryption on his own was also excluded from the scope of the PIIAA agreement. (Exhibit 7, page 9)

16. On or about 10 June 2015 DvV (ten days after his employment with Defendant) told Defendant that before his employment with Defendant he had been invited to join the Data Residency

Working Group (DRWG) that was holding its inaugural meeting in Berlin, GE, on 16 June 2015 (http://www.omg.org/data-residency/). DvV had already made travel arrangements for this meeting and he requested time off from his duties with Defendant without pay so he could attend.

17. DvV's supervisor at Defendant, Brian Fennimore ("Fennimore"), had Defendant print business cards that DvV could take with him to the meeting.

18. At the meeting of the DRWG, the concept of Data Residency ("DR") was discussed in detail, but no definition of the concept was agreed upon.

19. The DRWG has evolved working technical definitions that are understood among professionals who deal with these issues. For example, one de facto definition of DR is "...issues and practices related to the location of data, movement of data across geographies and jurisdictions, and protection of that data against unintended access." But the definition of DR is considered to have a broader reach than "... just the protection of personally identifiable information (PII). It also concerns the right to move 'sovereign' data, such as oil reserves data; international licensing of genomics data; distribution of biometrics data for security purposes; etc." (See OMG, *Data Residency, Request for Information,* MARS Document 2015-15-07, at §1.2 and §2.1 (http://www.omg.org/cgi-bin/doc?mars/15-1207).

20. DR can be described as the problem of information being created and/or owned subject to the control of one set of rules, laws, and customs (collectively "laws") but then transported so that it comes under the control of another jurisdiction having different laws. For example, information created by the US Army may physically be in the control of the US Navy. More importantly, information about citizens of another country, such as Spain, may be physically located in the United States under service agreements for the storage of data. The information of a Spanish citizen is subject to both Spanish and European laws, which may be more stringent than specific laws of the United States that may, for example, allow access by government security agencies that is not permitted under European law.

21. While returning from the Berlin meeting of the DRWG, inventor DvV recognized that his Trans Encryption invention could be used to solve this DR problem by dividing digitized intelligible information into randomized strings of data, none of which contains information, and storing them in different locations. It is not that the information is encrypted; it simply is not there, making the randomized strings of data useless to any entity that would wish to have the information, no matter where the randomized strings of data are physically located or what laws apply at the different locations.

22. DvV further recognized that the performance characteristics of existing network technology made his invention marketable, particularly in view of the large sums of money being spent on security clearances for those having access to equipment used to store intelligible information originating in various jurisdictions around the world. If what was stored were noninformational randomized strings of data, rather than intelligible information (encrypted or not), then these security costs could be dramatically reduced because those having access to the storage equipment would not require security clearances. Since Defendant had a presence in the market for data storage equipment, DvV resolved to take his Trans Encryption invention, which was not part of his employment relationship with Defendant, and make a mutually advantageous business proposal.

23. DvV returned from the DRWG meeting in Berlin late on 18 June 2015, eighteen days after his 1 June 2015 start date as an employee with Defendant and two days after being exposed to the practical aspects of DR. The next day, 19 June 2015, DvV outlined the business proposal and his proposed terms for engaging Defendant in this project to his supervisor, Fennimore. DvV told Fennimore that his prior Trans Encryption invention could be used to resolve DR. DvV explained that he had been working for years on the Trans Encryption method that would solve the DR issues, and told Fennimore a non-disclosure agreement would be needed to say more. DvV thought Defendant might be interested in the mutually advantageous business proposal, but if not he would take the idea elsewhere. DvV thought that Trans Encryption was patentable and did not distinguish that patentability from the ability of Trans Encryption to solve the DR problem. He did not discuss with Fennimore any uses of Trans Encryption beyond the specific

area of DR. He thought the business proposal could be very profitable for both DvV and Defendant.

24. In response, Fennimore said he would check with his supervisors at Defendant and get back to DvV. Fennimore got back to DvV the same day, saying that a co-founder of Defendant was very interested and would mention it to the other co-founders. Fennimore opined that the co-founders "would not want to make any moves until the acquisition is complete." EMC's acquisition of Defendant was completed on 9 July 2015. Exhibit 9, attached.

25. DvV was asked by Fennimore to prepare a one-page summary of the business proposal, which DvV gave the name "ROME". Between 22 June and early July 2015, DvV produced the one pager and submitted one and perhaps two revisions of the one pager, as requested by Fennimore. In July he also drafted a longer document setting out the business case, laying out the proposal in detail. This proposal was written by DvV on his own time, on his own equipment, in his own personal office. No facilities or equipment of Defendant was used. The First two pages of the Business Case are attached as Exhibit 4.

26. On return from Berlin, after having outlined the business proposal to Fennimore but before giving it the name "ROME", DvV again tested the invention on his own time and equipment, this time on a network configuration where the machines storing the divided randomized strings of data were separated by international boundaries. As DvV anticipated, the characteristics of the underlying network technology had matured so that the Trans Encryption invention operated even faster than shown in his earlier tests in 2007 and 2014 and was now in his opinion commercially viable as a solution to the data residency problem as described in the ROME business proposal.

27. The terms outlined by DvV to Fennimore contemplated that in return for prosecuting the patent and providing up-front compensation to DvV, the amount dependent on the percentage of license revenue splitting, Defendant would be able to license the Trans Encryption technology from DvV on preferred terms as compared to other licensees. Attached as Exhibit 3.

28. But after DvV submitted the ROME business proposal and the "one-pagers" to Fennimore to give to Fennimore's supervisors, a response to the ROME business proposal from Defendant management was not forthcoming.

29. On 6 October 2015, The Court of Justice of the European Union ruled that the "Safe Harbor" provisions under which US firms had been storing European data was not compliant with European data protection laws. *Schrems v. Data Protection Commissioner*, Case C-362/14, October 6, 2015.

30. When the *Schrems* ruling became known and its implications understood, Defendant became very interested in Trans Encryption and its ROME implementation.

31. On or about 13 October 2015 Defendant asked DvV to again submit the ROME business proposal.

32. In early December 2015, Fennimore notified DvV that Defendant would be interested in pursuing the ROME business proposal and a patent for Trans Encryption.

33. On 2 December 2015, patent attorney Holmes Anderson of Anderson Gorecki LLP ("Patent Attorney") notified DvV and Fennimore that he had been instructed by Defendant to draft a patent application based on "your invention disclosure EMC-15-1154" and that the "patent application is to be filed by the end of the year so we need to move quickly." Exhibit 5, attached.

34. On 3 December 2015 DvV replied via email to Patent Attorney requesting a copy of invention disclosure EMC-15-1154, which DvV had not seen and still has not seen. DvV also indicated that i) the "ROME" concept "was conceived during and shortly after my attendance at the inaugural Data Residence meeting in Berlin in June of 2015" and ii) "I have reduced it to practice on my own time, utilizing my own servers, and other than discussions with [Fennimore] regarding required disclosure, no company time or equipment has been authorized or used for this development." This email was copied to Daniel McLoughlin, ("McLoughlin"), an attorney working for EMC, the company that currently owns Defendant. On information and belief McLoughlin was acting on behalf of Defendant when he requested

the disclosure from DvV, when he received the emails set out in Exhibit 5, and when he acted in filing the '608 Application. Exhibit 5.

35. On 4 December 2015 McLoughlin responded to DvV's 3 December 2015 email requesting an oral discussion with DvV. In that oral discussion the following week McLoughlin asserted that what DvV had done prior to employment belonged to DvV but what DvV had done after employment belonged to Defendant. In that discussion DvV asserted that under his agreement with Defendant what he did on Trans Encryption on his own time and equipment belonged to him in the same way that Trans Encryption had been specifically excluded from the PIIAA. On information and belief Plaintiff alleges that McLoughlin was not aware at that time that the Defendant's standard PIIAA had been modified for DvV to exclude Trans Encryption. Exhibit 5.

36. On 8 December 2015, McLoughlin instructed Patent Attorney to develop the patent application for filing by the end of the year. DvV offered to share "my notebook and thoughts" with Patent Attorney. Patent Attorney indicated he wanted to receive from DvV "a high level description of the invention" and that he had not received "the usual invention disclosure form that would include that information." Exhibit 5.

37. Between 3 December 2015 and 31 December 2015, DvV worked with Defendant's Patent Attorney to complete a patent application for "Removing Information from Data" in accordance with the Trans Encryption technology disclosed in the Notebook. Exhibit 5.

38. On or about 31 December 2015, Patent Attorney presented DvV with a completed patent application (which became the '608 Application when filed on 28 January 2016), a Declaration that DvV was the inventor, an Assignment of the invention from DvV to Defendant, and an Application Data Sheet (ADS) showing Defendant as the Applicant via assignment. DvV signed the Declaration but refused to sign the Assignment Agreement because the invention of Trans Encryption described and claimed in the patent application had been reduced to practice before he was employed and was completely and specifically excluded from his work with Defendant by the PIIAA and because the financial terms of his ROME business proposal had not yet been negotiated. Exhibit 6.

39. The ’608 Application was completely derived from the pre-employment Notebook of the Inventor DvV, and did not include DvV’s post Berlin work or work done as an employee of Defendant. The ROME business proposal followed DvV’s post Berlin i) recognition that his pre-employment Trans Encryption invention could be used to solve the DR problem and ii) testing of the invention to confirm that the characteristics of the existing network configuration would support sufficient speed in the operation of the invention to make the invention’s use as a solution to the DR problem commercially viable. Indeed, the ’608 Application did not include any reference to the speed with which the invention operates on a network configuration, or any reference to the commercialization of the invention to solve the DR problem as described in the ROME business proposal. Even the claims having relevance to the DR problem were rooted in the pre-employment Notebook. DvV had informed Patent Attorney of post-Berlin testing of the invention, but these results were not included in the ’608 Application. Otherwise, the only work involving Trans Encryption done while DvV was on duty with Defendant was in answering questions over the phone and via email from the Patent Attorney to help prepare the patent application.

40. During December 2015 and early 2016 DvV had numerous discussions by email and telephone concerning Trans Encryption with Defendant. DvV anticipated that negotiations in response to his ROME business proposal would resolve how the parties would be compensated, and this was the basis on which DvV helped with the patent preparation during December 2015. Defendant’s demand that DvV assign his invention was puzzling to DvV since negotiations in response to his ROME business proposal had not yet resolved how the parties would be compensated. DvV thought this demand was a miscommunication or bureaucratic stupidity, and the compensation issues would still be worked out because his employment agreement with Defendant specifically excluded Trans Encryption from the scope of his employment. DvV explicitly stated in his further discussions with Defendant that he was not assigning anything concerning Trans Encryption without compensation and an executed written contract following negotiations in response to his ROME business proposal.

41. DvV has refused to assign any rights in Trans Encryption to Defendant or anyone else without compensation and a written contract until DvV assigned the rights to Plaintiff.

42. On or about 28 January 2016, without the knowledge of DvV and before DvV was terminated from employment with Defendant, Defendant filed a patent application with the USPTO, Application Serial Number 15/008,608 titled "Removing Information from Data", the '608 Application. On information and belief, the '608 Application was filed with the Declaration signed by the inventor on 31 December 2015 but this authorization had been revoked by DvV via express instructions sent on 26 January 2016 from counsel for DvV to counsel for Defendant not to file any such patent application until issues regarding ownership were resolved. (Attached, Exhibit 7 and Exhibit 8).

43. On or about 10 March 2016, DvV was relieved from duties with Defendant and was terminated about three (3) weeks later because he refused to sign the assignment to Defendant of his invention.

44. On the Application Data Sheet ("ADS") required by the USPTO one is required to list the inventor and the capacity of the applicant filing the application. Section 4(b) of the *Leahy – Smith American Invents Act*, 29 Stat. 284 (2011), amends 35 U.S.C § 118 to read as follows:

> A person to whom the inventor has assigned or is under an obligation to assign the invention may make an application for patent. A person who otherwise shows sufficient proprietary interest in the matter may make an application for patent on behalf of and as agent for the inventor on proof of the pertinent facts and a showing that such action is appropriate to preserve the rights of the parties. If the Director grants a patent on an application filed under this section by a person other than the inventor, the patent shall be granted to the real party in interest and upon such notice to the inventor as the Director considers to be sufficient.

45. On information and belief, Plaintiff alleges that Defendant filed and represented to the USPTO that Defendant had authority to file the invention because it had the right to do so under one or more of the provisions of 35 U.S.C. § 118. Defendant knew that DvV had refused to sign the assignment proffered to him and why he refused to sign it, pending negotiation over the business arrangement reflected in the ROME business proposal. Defendant knew that the ROME business proposal was predicated on DvV's ownership of the Trans Encryption invention. On information and belief, Defendant and Patent Attorney filed the '608 Application with a revoked authorization from DvV and an ADS that misrepresented the Defendant as owner of the '608 Application.

46. On or about 5 April 2016 DvV filed a provisional application for patent with the USPTO, number 63/318,714 (the "'714 Provisional Application"). This filing consisted of the applicable USPTO form and the Notebook.

47. On 6 September 2016, DvV assigned the '714 Provisional Application, the '608 Application together with all other rights, including "Trans Encryption Studies & Practices", the Notebook of dated entries maintained by DvV, the inventor, to Plaintiff. Exhibit 1.

48. The ownership of Trans Encryption and the claims of authority under Federal law to file the '608 Application are the primary issue in this proceeding.

## STATEMENT OF CLAIMS

### FIRST CLAIM

### (Declaratory Judgment That The Inventor DvV Was The Applicant and Owner When The '608 Application Was Filed With The USPTO, And For Declaration That The Invention Is Owned By Plaintiff)

### (35 U.S.C 115, 35 U.S.C. § 118, 35 U.S.C. § 256, 35 U.S.C. 261, 28 U.S.C. § 2201, 35 C.F.R. § 3.1, 35 C.F.R. § 3.71).

49. Plaintiff, TFOR, is the owner of all rights associated with the '608 Application because all such rights have been assigned by the inventor DvV to TFOR by a written document that conforms to 35 U.S.C § 261. (Exhibit 1) None of the work that resulted in the '608 Application was done by DvV while he was employed with Defendant and the Defendant did nothing whatever to contribute to the invention. The invention that resulted in the '608 Application was not subject to the employment agreement between DvV and Defendant. None of the duties that DvV had with Defendant involved anything related to the invention Trans Encryption embodied in the '608 Application.

50. Defendant has filed the '608 Application in violation of the cited federal statutes and regulations and without authority because the inventor refused to assign the '608 Application to Defendant. Defendant willfully and wrongfully represented to the USPTO that Defendant was the applicant for (and therefore owner of) the '608 Application by virtue of one of the provisions of 35 U.S.C. § 118 and the regulations promulgated thereunder.

51. Defendant has misappropriated the invention now owned by Plaintiff, TFOR, by filing the '608 Application as the applicant with the specific knowledge that the inventor had not assigned and had refused to assign to Defendant the invention described and claimed in the '608 Application, despite a demand by counsel for DvV, the inventor, that Defendant not file any such patent application (Exhibits 7 & 8), and despite the fact that the scope of the employment agreement between DvV and Defendant does not include Trans Encryption, in particular as described in the pre-employment Notebook which was the source of the '608 Application, which Defendant claims to own by virtue of post-employment work of DvV that was not included in the '608 Application, and by falsely representing to the USPTO that Defendant had the right to file the '608 Application as applicant.

## SECOND CLAIM

## (Misappropriation of Invention)

52. Defendant did not invent Trans Encryption and did not develop the claims embodied in the '608 Application. The inventor did no work described and claimed in the '608 Application while employed by Defendant other than respond to requests for information from Patent Attorney.

53. Trans Encryption as described and claimed in the '608 Application was invented, tested, and ready to be patented before DvV was employed by Defendant.

54. Before he accepted employment by Defendant, DvV negotiated with Defendant a specific exemption from the scope of the PIIAA for all work on Trans Encryption, the exemption from scope covering the subject matter of Trans Encryption without limitation as to time period, and therefore outside the scope whether before he was employed by Defendant, while he was employed by Defendant, or after he was employed by Defendant. (Exhibit 2)

55. DvV as inventor and owner of Trans Encryption made a business proposal to Defendant for using the Trans Encryption technology to their mutual advantage, a component of the proposal being that Defendant would undertake prosecution of a patent on the invention so that the invention could be profitably employed in solutions to the DR problem.

56. Defendant purported to accept DvV's business proposal by undertaking preparation of a patent on the invention, and DvV worked diligently on the patent application during December 2015. Contrary to the expectations of DvV, Defendant failed to complete negotiations for the compensation component of DvV's business proposal, instead attempting to force DvV to assign the invention outright to Defendant.

57. When those efforts to force DvV to assign the invention outright to Defendant were unsuccessful, Defendant maintained its refusal to complete negotiations for the compensation component of DvV's business proposal, instead choosing to file what became the '608 Application as applicant and purported owner.

58. The specification and claims in the '608 Application filed by Defendant derive directly and entirely from work done by DvV before he was employed with Defendant and without reference to any work done by DvV while employed by Defendant.

59. Defendant filed the '608 Application with the USPTO falsely indicating that it was the applicant and therefore presumptive owner of the Trans Encryption invention described and claimed in the '608 Application, when Defendant knew or should have known that it was not and could not be the owner of the invention.

60. Defendant submitted an ADS with the '608 Application showing it was the applicant and therefore presumptive owner of the '608 Application without consulting DvV and without the authority of the true owner and without engaging in negotiations necessary to fulfill the terms of the business proposal proffered by DvV.

## Third Claim

## (Misappropriation of Trade Secret)

61. The description and claims that constitute the invention Trans Encryption and the description of the ROME business proposal constitute information that is and presently remains a trade secret.

62. Defendant misappropriated the trade secret Trans Encryption and ROME.

63. Trans Encryption and ROME derive independent economic value, both actual and potential, from not being generally known to and not being readily ascertainable by proper means by other persons who could obtain economic value from its discovery and use.

64. Defendant has used improper means to obtain the trade secret Trans Encryption, the property of Plaintiff, by purporting to enter into a business arrangement proposed by DvV for a mutually advantageous compensation arrangement, obtaining the cooperation of DvV for preliminary steps for transforming the trade secret into a patent, and then attempting to secure the trade secret as a patent in its own name as applicant and owner, which would ultimately have disclosed the trade secret to the world before completion of the contemplated compensation arrangement which would give DvV his due in converting DvV's trade secret into a patent. This would allow Defendant to derive great economic value and gain from the knowledge and misappropriation of the trade secret Trans Encryption, which now belongs to Plaintiff.

65. Defendant has used the same improper means to obtain the trade secret ROME, the property of Plaintiff, by obtaining knowledge of the concept that can be used in its own business and businesses that own Defendant, thus allowing Defendant to derive great economic value from knowledge and misappropriation of the trade secret ROME.

## Fourth Claim

## (Conversion of Property)

66. DvV as owner of Trans Encryption entered into a negotiation with Defendant in good faith, proposing to license Trans Encryption to Defendant on favorable terms relative to other licensees in return for an upfront payment, if Defendant undertook to obtain patent protection for the invention, all of this in furtherance of the ROME business proposal.

67. Defendant expressed interest in DvV's proposal and undertook to obtain patent protection for the invention. DvV actively participated in this undertaking and a suitable patent application (the '608 Application) was prepared, based entirely on the Trans Encryption invention as described in the pre-employment Notebook.

68. Before the remaining terms of the proposal were negotiated, Defendant peremptorily asserted that it was the owner of the invention and filed the patent application (the '608 Application) in its own name, notwithstanding DvV's refusal to assign the invention to Defendant and notwithstanding DvV's insistence that the negotiations over the compensation terms of the ROME business proposal must be consummated before filing the patent application.

69. Thus Defendant has converted the subject matter of the negotiation between DvV and Defendant, the description of the invention Trans Encryption and the description of the ROME business proposal that was to make use of the Trans Encryption invention, to its own use and has thereby deprived Plaintiff of the use of its own property by improper means.

70. Defendant has persisted with its conversion, notwithstanding efforts by DvV to reopen negotiations so that the ROME business proposal could be properly concluded. Defendant has rejected such efforts at negotiation, insisting that it owns the '608 Application and insisting that DvV assign the '608 Application to Defendant.

71. Plaintiff, as exclusive owner of Trans Encryption and the unconsummated ROME business proposal, was deprived of Plaintiff's right to sell and otherwise obtain economic value from its ownership of Trans Encryption and ROME because of Defendant's wrongful conversion of Plaintiff's property to Defendant's own use.

## PRAYER FOR RELIEF

72. That this Court declare that at the time the '608 Application was filed DvV was the inventor and applicant of the invention described and claimed, and that Plaintiff is now the applicant by virtue of assignment from DvV.

73. That this Court declare that all ownership, rights, and interests in the '608 Application now are owned by Plaintiff by virtue of the assignment by the inventor, DvV, to Plaintiff.

74. That this Court declare that Defendant and any owners of Defendant have no ownership, rights, or interest in Trans Encryption or the '608 Application.

75. That this Court declare that Defendant and any owners of Defendant have no ownership, rights, or interest in the ROME business proposal, having failed to complete the bargain proffered by DvV.

76. That this Court order Defendant to correct the pending '608 Application with the USPTO to withdraw its assertion of applicant status, so that Plaintiff can take the necessary steps to perfect its ownership in the '608 Application.

77. That this Court order the Defendant to pay damages to Plaintiff in the sum of Twenty Million Dollars ($20,000,000) for knowingly and without legal basis misappropriating the invention Trans Encryption owned by Plaintiff by filing the '608 Application as applicant and by doing so without completing the compensation arrangement that was an essential component of the business proposal proffered to Defendant by inventor DvV.

78. That this Court order the Defendant to pay damages to Plaintiff in the sum of Ten Million Dollars ($10,000,000) for wrongfully misappropriating Plaintiff's trade secrets and a further Ten Million Dollars ($10,000,000) for conversion of Plaintiff's property for Defendant's own use.

79. That this Court Award Plaintiff all costs and attorneys' fees.

80. For this Court to award and order such other, further, and different relief to which Plaintiff may be entitled from the pleading and proof of this cause.

81. Plaintiff demands trial by a struck jury on all issues arising in this matter.

Respectfully Submitted,

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